

ZANDRA L. LOPEZ
 California Bar No. 216567
 427 C Street, suite 300
 San Diego, Ca. 92101
 619.233.3169, ext. 17
 fax: 619.684.3522
 zll@zandralopezlaw.com

Attorney for **Mr. Joel Jimenez-Polanco**

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 (HONORABLE DANA M. SABRAW)

UNITED STATES OF AMERICA,)	CASE NO. 08CR0016-DMS
)	
Plaintiff,)	DATE: February 15, 2008
)	TIME: 11:00 a.m.
v.)	
)	STATEMENT OF FACTS AND
JOEL JIMENEZ-POLANCO)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN SUPPORT OF
Defendant.)	DEFENDANT'S MOTIONS
)	
)	
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I.

STATEMENT OF FACTS¹

On August 27, 2007, Mr. Jimenez-Polanco was arrested on suspicion of being a deported alien found in the United States.

On January 2, 2008, the government secured a one count indictment against Mr. Jimenez-Polanco charging him with being found in the United States after

¹Facts referred to in this memorandum are based on information provided by the government. Mr. Jimenez-Polanco does not admit their accuracy and reserves the right to challenge them.

1 deportation under 8 U.S.C. Section 1326.

2 **II.**

3 **MOTION TO COMPEL DISCOVERY/PRESERVE EVIDENCE**

4 Mr. Jimenez-Polanco requests the following discovery. His request is not limited
5 to those items of which the prosecutor is aware. It includes all discovery listed below that
6 is in the custody, control, care, or knowledge of any “closely related investigative [or
7 other] agencies.” See United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

8 (1) Brady Information. The defendant requests all documents, statements, agents’
9 reports, and tangible evidence favorable to the defendant on the issue of guilt and/or
10 which affects the credibility of the government’s case. Under Brady v. Maryland, 373
11 U.S. 83 (1963), impeachment as well as exculpatory evidence falls within the definition
12 of evidence favorable to the accused. United States v. Bagley, 473 U.S. 667 (1985);
13 United States v. Agurs, 427 U.S. 97 (1976).

14 (2) Any Proposed 404(b) Evidence. The government must produce evidence of
15 prior similar acts under Fed. R. Crim. P. 16(a)(1) and Fed. R. Evid. 404(b) and any prior
16 convictions which would be used to impeach as noted in Fed. R. Crim. P. 609. In
17 addition, under Fed. R. Evid. 404(b), “upon request of the accused, the prosecution . . .
18 shall provide reasonable notice in advance of trial . . . of the general nature” of any
19 evidence the government proposes to introduce under Fed. R. Evid. 404(b) at trial. The
20 defendant requests notice two weeks before trial to give the defense time to investigate
21 and prepare for trial.

22 (3) Request for Preservation of Evidence. The defendant requests the preservation
23 of all physical evidence that may be destroyed, lost, or otherwise put out of the
24 possession, custody, or care of the government and which relate to the arrest or the events
25 leading to the arrest in this case. This request includes, but is not limited to, the results of
26 any fingerprint analysis, the defendant’s personal effects, and any evidence seized from
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1 the defendant or any third party.

2 (4) Defendant's Statements. The defendant requests disclosure and production of
3 all statements made by the defendant. This request includes, but is not limited to, the
4 substance of any oral statement made by the defendant, Fed. R. Crim. P. 16(a)(1)(A), and
5 any written or recorded statement made by the defendant. Fed. R. Crim. P.
6 16(a)(1)(B)(i)-(iii).

7 (5) Tangible Objects. The defendant seeks to inspect and copy as well as test, if
8 necessary, all other documents and tangible objects, including photographs, books,
9 papers, documents, fingerprint analyses, vehicles, or copies of portions thereof, which are
10 material to the defense or intended for use in the government's case-in-chief or were
11 obtained from or belong to the defendant. Fed. R. Crim. P. 16(a)(1)(E).

12 (6) Expert Witnesses. The defendant requests the name, qualifications, and a
13 written summary of the testimony of any person that the government intends to call as an
14 expert witness during its case in chief. Fed. R. Crim. P. 16(a)(1)(G).

15 (7) Witness Addresses. The defendant requests access to the government's
16 witnesses. Counsel requests a witness list and contact phone numbers for each
17 prospective government witness. Counsel also requests the names and contact numbers
18 for witnesses to the crime or crimes charged (or any of the overt acts committed in
19 furtherance thereof) who will not be called as government witnesses.

20 (8) Jencks Act Material. The defendant requests production in advance of trial of
21 material discoverable under the Jencks Act, 18 U.S.C. § 3500. Advance production will
22 avoid needless delays at pretrial hearings and at trial. This request includes any "rough"
23 notes taken by the agents in this case. This request also includes production of transcripts
24 of the testimony of any witness before the grand jury. See 18 U.S.C. § 3500(e)(1)-(3).

25 (9) Informants and Cooperating Witnesses. The defendant requests disclosure of
26 the name(s), address(es), and location(s) of all informants or cooperating witnesses used
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1 or to be used in this case, and in particular, disclosure of any informant who was a
2 percipient witness in this case or otherwise participated in the crime charged. Roviaro v.
3 United States, 353 U.S. 52, 61-62 (1957). The government must disclose any information
4 derived from informants which exculpates or tends to exculpate the defendant. Brady v.
5 Maryland, 373 U.S. 83 (1963). The government must disclose any information indicating
6 bias on the part of any informant or cooperating witness. Id.

7 (10) **Specific Request**. Mr. Jimenez-Polanco specifically requests the opportunity
8 to view his “A-File.”

9 (11) **Residual Request**. The defendant intends by this discovery motion to invoke
10 his rights to discovery to the fullest extent possible under the Federal Rules of Criminal
11 Procedure and the Constitution and laws of the United States.

12 III.

13 **LEAVE TO FILE FURTHER MOTIONS**

14 Mr. Jimenez-Polanco and defense counsel have received approximately 166 pages
15 of discovery in this case. As new information surfaces – via further discovery provided
16 by government, defense investigation, or an order of this court – the defense may need to
17 file further motions, or to supplement existing motions. Defense counsel requests leave
18 to file further motions.

19 IV.

20 **CONCLUSION**

21 Mr. Jimenez-Polanco requests that this Court grant his motions.

22 Respectfully submitted,

23 //s// Zandra L. Lopez

24 Dated: February 1, 2008

25 **ZANDRA L. LOPEZ**
26 Attorney for Mr. Jimenez-Polanco